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In The

Supreme Court of the United States

RICHARD F. DAVET and LYNN DAVET,

Petitioners,

v.

BANK ONE-CLEVELAND, N.A.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION PRESENTED FOR REVIEW

Does the "*Rooker-Feldman*" doctrine deny the federal courts subject matter jurisdiction under Article III § 2 of the United States Constitution to entertain an original, separate and independent action in the nature of a common law bill in equity arising directly under the due process clause of the Fourteenth Amendment collaterally attacking a state court foreclosure decree as void for lack of subject matter jurisdiction, lack of justiciability, fraud upon the rendering state court and for unconstitutional departures from established modes of procedure when the common law equitable remedy sought in federal court was cognizable under *Barrow v. Hunton*, 99 U.S. 80 (1878).

II. THE PARTIES

Petitioners Richard F. Davet and Lynn Davet are husband and wife and adult citizens and residents of Thompson Township, Geauga County, Ohio.

Respondent Bank One-Cleveland is a Delaware Corporation owned by JP Morgan Chase Bank, engaged in financial and banking services including extending mortgage loans to Ohio residents.

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III. OPINIONS BELOW

The unreported memorandum order of dismissal of the United States District Court for the Northern District of Ohio was entered on April 2, 2007. (App. 4-8)

The unreported order and final judgment of the United States Court of Appeals for the Sixth Circuit was entered on November 28, 2007. (App. 1-3)

The unreported order and final judgment of the United States Court of Appeals for the Sixth Circuit denying a timely petition for rehearing was entered on January 16, 2008. (App. 9-10)

IV. JURISDICTION

The final judgment of the United States Court of Appeals for the Sixth Circuit was entered on November 28, 2007.

On December 12, 2007 Petitioners filed a timely petition for rehearing. On January 16, 2008 the panel entered an order denying rehearing.

On March 14, 2008, Petitioners filed a motion with Justice Stevens sitting as Sixth Circuit Justice requesting an extension of time in which to file a petition for certiorari.

On March 25, 2008, Justice Stevens granted the Petitioners' motion extending the time for filing this petition to June 14, 2008.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

V. CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Art. III, section 2:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

U.S. Const. Amendment XIV, section 1:

All Persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens and of the State wherein they reside. No State shall make or enforce any law which abridge the privileges or immunities of citizens of the Unites States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VI. STATEMENT OF THE CASE

On March 1, 2006, Petitioners filed this action in the United States District Court for the Northern District of Ohio seeking to void a foreclosure decree order of Petitioners' house entered in Respondent's favor.

On January 3, 2007 Petitioners filed an amended complaint seeking to void the Ohio foreclosure decree of the Petitioners' house. (App 11-16)

On January 29, 2007 Respondent filed a motion to dismiss on grounds that the *Rooker-Feldman* doctrine barred Petitioners' collateral attack in federal court of the Ohio foreclosure decree even the action in state court was not justiciable as Respondent Bank One did not have standing to bring a foreclosure action as it had no legal or equitable interest in the Petitioners' house or the mortgage instruments, as well as departures from established

modes of procedure such as an off-the-record judicial re-assignment without just cause, referral to the random selection process administered by the clerk, and the knowledge of the Petitioners and for fraud upon the rendering state court.

On April 2, 2007, the District Court entered an Order and Opinion granting Respondent's Motion to Dismiss on the ground that *Rooker-Feldman* denied the court subject matter jurisdiction to hear a collateral attack on the Ohio foreclosure decree as void. (App. 4-8)

Petitioners filed a timely notice of appeal of the District Court's Order of Dismissal to the United States Court of Appeals for the Sixth Circuit.

On November 28, 2007, the United States Court of Appeals summarily affirmed the District Court's order of dismissal on *Rooker-Feldman* grounds. (App. 1-3)

On December 12, 2007, Petitioners' filed a Motion for Rehearing. On January 16, 2008 the Sixth Circuit entered an order denying rehearing. (App. 9-10)

VII. STATEMENT OF FACTS

The Petitioners' action against Bank One-Cleveland, NA arises from Bank One's misconduct in a foreclosure action filed by Plaintiff Nationsbanc Mortgage Corp. on March 1, 1996, in the Cuyahoga County Court of Common Pleas wherein the Plaintiff in the action, Nationsbanc, falsely claimed to be the

owner and holder of the note and mortgage that the Davets entered into with Central National Bank in June 1978 for the purchase of his home in Beachwood, Ohio.

The Davets, in their answer and counterclaim, challenged Nationbanc's standing to sue as nothing in the Preliminary Judicial Report or local rule requirements evidenced that Nationsbanc was the owner and holder of the Davets' note and mortgage. Nationsbanc had fraudulently invoked the jurisdiction of the court by falsely claiming to be the holder of the note. Respondent Bank One simply stated their second mortgage position in 1996 and did not ask for foreclosure on their lien.

Three years after filing the foreclosure action, Nationsbanc's trial counsel prepared an assignment whereby Fannie Mae purportedly assigned Davets' mortgage and note to Nationsbanc effective March 19, 1999 in an attempt to retroactively cure the standing problem before the court.

On July 6, 1999 Respondent Bank One filed, among other things, Motion to Amend their Answer seeking a cross claim for foreclosure, which was granted by the assigned Ohio court, even though there was no justiciable issue before the court as Nationsbanc lacked standing to sue as the real party in interest and as such should have been dismissed from the lawsuit.

Subsequent thereto the Judge assigned to the case improperly reassigned and transferred the foreclosure action to another judge off the record, without just cause or a statement of reasons or knowledge or notice to the Davets without the random selection process administered by the Clerk's office to guard against judge shopping by attorneys seek to achieve a more favorable outcome with a different judge.

On September 24, 1999, the re-assigned judge entered a final order granting Bank One's demand for a decree of foreclosure.

The foreclosure case judgment entry by the re-assigned judge in favor of said defendant Bank One is a nullity because the original trial judge assigned to another judge lacked jurisdiction to transfer the case to another judge and compounded the conduct by reassigning the case to the second judge off the record instead of through the random selection process administered by the clerk of courts. The Davets had no knowledge that the original trial judge had re-assigned and transferred the foreclosure action to a second judge without a random re-assignment by the clerk.

Thereafter the foreclosure decree issued by the second judge was pursued by Bank One and eventually led to the sale of the Davets' property on August

7, 2006 after this federal action was filed.[1] The purchaser of the property at the Sheriff's Sale was Homesales, Inc., a wholly owned entity of Bank One-Cleveland, NA, nka JP Morgan Chase Bank Homesales, Inc. sold the property immediately to a buyer financed by Bank of America.

Then the Davets, as pro se litigants filed suit in the United States District Court for the Northern District of Ohio seeking to void the Ohio foreclosure decree but were instead dismissed by the district court under *Rooker-Feldman*, the Sixth Circuit summarily affirmed and this Petition follows.

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[1] The Davets' unrelenting and determined challenge as pro se litigants to stop the foreclosure of their home began in 1996 and has been widely reported in the national press for their willingness to pursue their claims. See, e.g., Amir Efrat, *The Courthouse: How One Family Fought Foreclosure*, WALL STREET JOURNAL (12/28/07) at page A-1:

> Mr. Davets' case is believed to be the longest residential foreclosure of its kind in the history of Cuyahoga County, which is at the epicenter of the foreclosure crisis currently enveloping Ohio and many other parts of the country. Foreclosure actions are generally routine, typically taking from a few months to a couple of years to get the borrower out of the home. Companies turn the work over to so-called foreclosure-mill law firms, and generally cases are uncontested.

VIII. REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

1. This Original, Separate and Independent Action In Rem in the Nature of a Common Law Bill in Equity Cognizable Under Federal and Ohio Law States a Claim for Relief Arising Directly Under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Petitioners raise an important question of first impression since *D.C. Court of Appeals v. Feldman* was decided by this Court in 1983, presented for review at a time that our nation is experiencing "Love in the Time of Subprime," when distressed homeowners[2] in increasing numbers[3] are turning to the federal

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[2] On May 11, 2008 the Cleveland Plain Dealer compiled a list of the loans made by the top five subprime lenders in Cleveland during 2005. Records show that 48 percent of those loans to purchase or refinance Cleveland houses resulted in a foreclosure lawsuit. 28 percent of mortgages of those mortgages were originated by five companies.

There are estimates that at least $7 billion in fraudulent loans were originated nationally in 2007. Ohio, according to an index that tracks mortgage fraud cases, has one of the worst fraud rates in the country. See, Mark Gilligan, *SubPrime House of Cards*.

[3] A recent study released this year found that the number of subprime related cases filed in federal court in 2007 accelerated dramatically. Indeed, the number of filings nearly doubled during the second half of 2007, from 97 to 181 for an annual total of 278. Geographically, around half of all cases were filed in California and New York with Ohio and Michigan not far

(Continued on following page)

courts for equitable relief under *Barrow v. Hunton*, 99 U.S. 80 (1878), only to be summarily turned away for want of subject matter jurisdiction essentially without any legal analysis or statement of reasons or publishable opinion other then the typical boilerplate mantra district court's routinely employ against pro se litigants as the Petitioners were below such as "*Rooker-Feldman* denies impermissible appeals of state court judgments in federal court. Any review of a state court judgment may only be taken by filing a petition for writ of certiorari with the Supreme Court of the United States under 28 U.S.C. § 1257."[4]

Review by this Court of the question presented is necessary at a time of record nationwide foreclosures because the Third, Fifth, Sixth, Seventh, Eighth,

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behind. According to the study litigation activity is only likely to increase in 2008, as is already evident. The prospect of large-scale intervention by government and/or self-prescribed industry solutions, not to mention the economic environment, may affect the volume of future filings; however, the explosion of litigation activity in 2007 is likely only the foundation for expanded activity in 2008. See Jeff Nelson, *Subprime Mortgage and Related Litigation 2007: Looking Back at What's Ahead* (Navigant 2008).

[4] To impress upon the Court the shear magnitude of federal court filings traceable to the collapse of the subprime mortgage industry Petitioners have compiled a list of recent federal cases brought in equity challenging the validity of state foreclosure decrees as wanting in due process and for fraud upon the rendering court only to be thrown out of federal court for want of subject matter jurisdiction under the *Rooker-Feldman* doctrine for bringing a so-called impermissible appeal of a state court foreclosure. (App. 17-32.)

Tenth and Eleventh Circuits[5] all deny collateral attacks of state foreclosure decrees under *Rooker-Feldman*, while the Ninth Circuit finds no *Rooker-Feldman* bar at all.[6] It appears that the First, Second, Fourth and District of Columbia Circuits have never addressed the *Rooker-Feldman* question in the context of a challenge to the validity of a state court foreclosure decree. Certiorari should be granted to

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[5] *Knapper v. Bankers Trust Co.*, 407 F.3d 573 (3d Cir. 2005) (*Rooker-Feldman* doctrine bars due process challenge to set aside state court foreclosure order); *United States v. Shephard*, 23 F.3d 923 (5th Cir. 1994) (*Rooker-Feldman* bars collateral attack of state court foreclosure order); *Givens v. Homecomings Financial*, 2008 U.S. App. LEXIS 11003 (6th Cir. 2008) (plaintiff's request for an injunction to enjoin defendants from entering his property was an attempt to "obtain a federal reversal of state court decision" in violation of the *Rooker-Feldman* doctrine); *Taylor v. Federal National Mortgage Association*, 374 F.3d 529 (7th Cir. 2004) (no jurisdiction under *Rooker-Feldman* to intervene in the foreclosure actions); *Postma v. First Federal Savings and Loan Association of Sioux City, Iowa*, 74 F.3d 160 (8th Cir. 1996) (collateral attack of state court foreclosure order outside the jurisdiction of the federal courts under *Rooker-Feldman*); *Crutchfield v. Countrywide Home Loans*, 389 F.3d 1144 (10th Cir. 2004) (*Rooker-Feldman* barred plaintiff's federal court challenge to due process, lack of notice, service in the underlying foreclosure action); *Mickens v. Tenth Judicial Circuit*, 2006 U.S. App. LEXIS 125514 (11th Cir. 2006) (under the *Rooker-Feldman* plaintiff's federal claims were barred as claims "were attempting to reverse the state court's orders relating to ownership of the property in question.")

[6] *Fontana Empire v. City of Fontana*, 307 F.3d 987, 995-96 (9th Cir. 2002) (*Rooker-Feldman* no bar to challenge to foreclosure judgment as claims not inextricably intertwined with the state court judgment).

resolve the conflict on the issue among the seven circuits that disagree with the Ninth Circuit and decide whether the *Rooker-Feldman* doctrine abrogates a common law bill in equity that traces its origins to Magna Carta, an equitable remedy created by the chancery courts and adopted by this Court in *Barrow v. Hunton*, 99 U.S. 80 (1878) to collaterally attack a state court judgment in federal court as void if the court that rendered it lacked subject matter jurisdiction, personal jurisdiction over the parties, the proceedings were wanting in due process or the judgment was obtained by fraud upon the rendering state court.[7]

The United States courts are open under the "arising under clause" of Article III of the United States Constitution to entertain an original, separate and independent action in the nature of a common law bill in equity arising directing under the Fourteenth Amendment of the United States Constitution as well as under the law of the rendering state of Ohio regarding void judgments invoking federal question jurisdiction to collaterally attack a foreclosure decree as wanting in procedural and substantive due process. *Barrow v. Hunton*, 99 U.S. 80, 82-85 (1878); *Furnald v. Glen*, 64 F. 49 (2d Cir. 1894); *Griffith v. Bank of New York*, 147 F.2d 899 (2d Cir. 1945) (bill in equity enjoins void judgment); *Gaulpin*

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[7] See Allison B. Jones, *The Rooker-Feldman Doctrine: What Does it Mean to be "Inextricably Intertwined"?*, 56 Duke L. J. 463 (2006).

v. Page, 9 F. 1113, 1122 (9th Cir. 1870) (collateral attack on void judgment is an equitable proceeding *in rem*). The law is clearly established under both federal and Ohio common law that an original, separate and independent bill in equity will enjoin the operation of a void judgment whether the action is brought in either a federal or Ohio state court. Regarding the availability of a bill in equity under Ohio common law the Ohio Supreme Court has consistently held that the Ohio courts possess the inherent power in equity to set aside a void judgment. *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988); *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 368, 721 N.E.2d 40 (2000); *State ex rel. Ballard v. O'Donnell*, 50 Ohio St.3d 182, 553 N.E.2d 650 (1990) (Ohio courts have inherent power in equity to vacate a void judgment).

In *Barrow v. Hunton*, 99 U.S. 80 (1878) the Court spoke unequivocally.

> The question presented in regard to the jurisdiction of the Circuit Court is, whether the proceeding to procure nullity of the former judgment in such a case as the present is or is not in its nature a separate suit, or whether it is a supplementary proceeding so connected with the original suit as to form an incident to it, and substantially a continuation of it. If the proceeding is merely tantamount to the common-law practice of moving to set aside a judgment for irregularity, or to a writ of error, or to a bill of review or an appeal, it would belong to the latter

> category, and the United States court could not properly entertain jurisdiction of the case.
>
> On the other hand, if these proceedings are tantamount to a bill in equity to set aside a decree for fraud in the obtaining thereof, then they constitute an original and independent proceeding, and according to the doctrine laid down in *Gaines v. Fuentes* (92 U.S. 10), the case might be within the cognizance of the Federal courts. The distinction between the two classes of cases may be somewhat nice, but it may be affirmed to exist. In the one class there would be a mere revision of errors and irregularities, or of the legality and correctness of the judgments and decrees of the State courts; and in the other class, the investigation of a new case arising upon new facts, although having relation to the validity of an actual judgment or decree, or of the party's right to claim any benefit by reason thereof.

Id. at 82-83.

In *Furnald v. Glen*, 64 F. 49 (2d Cir. 1894), the court applied *Barrow v. Hunton*.

> The circuit courts of the United States are not precluded from exercising in proper cases the inherent jurisdiction of courts of equity to restrain the prosecution of unconscionable actions at law, notwithstanding the particular action may be based upon the judgment of a state court. *Payne v. Hook*, 7

> Wall. 425; *Barrow v. Hunton*, 99 U.S. 80; *Johnson v. Waters*, 111 U.S. 640, 4 Sup. Ct. 619; *Marshall v. Holmes*, 141 U.S. 589, 12 Sup. Ct. 62; *Mississippi Mills v. Cohn*, 150 U.S. 202, 14 Sup. Ct. 75.

Id. at 53-54.

The Court has held that if a party has used fraud to obtain a judgment, [an adverse party may, by bringing a new proceeding, invoke the power of the courts to scrutinize the conduct of the parties in the previous action. See *Marshall v. Holmes*, 141 U.S. at 599, quoting *Johnson v. Waters*, 111 U.S. 640, 667, 28 L. Ed. 547, 4 S. Ct. 619 (1884). (Where fraud is found, the party that used fraud should be deprived of the benefit of the judgment and any inequitable advantage gained and the courts should not forfeit truth for the sake of finality, nor let the technical intricacies of the law governing attachments obscure their just administration.)

In *Marine Ins. Co. of Alexandria v. Hodgson*, 11 U.S. 332, 336 (1807), Chief Justice Marshall said:

> that any fact which clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself in a Court of law; or of which he might have availed himself at law, but was prevented by fraud or accident unmixed with any fault or negligence in himself or his agents, will justify an application to a Court of Chancery.

Id. at 481-82.

In *Wetmore v. Karrack*, 205 U.S. 141, 149 (1907) the Court held that "departures from established modes of procedure render judgment void," *Windsor v. McVeigh*, 93 U.S. 274, 282 (1876). Particularly when the procedural defects are of sufficient magnitude and "so unfair as to deprive the proceeding of its vitality." *Eagles v. United States*, 329 U.S. 304, 314 (1946).

A common bill in equity to enjoin the operation of a void final judgment has long been available whenever a "party, through no fault of his own, has had no opportunity to present an otherwise meritorious claim or defense." In *United States v. Throckmorton*, 98 U.S. 61 (1878) the Court clearly recognized the availability of the equitable remedy such as in cases of connivance by the prevailing party in securing a final judgment.

> But there is an admitted exception to this general rule in cases where, by reason of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his

> client's interest to the other side, – these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing.

United States v. Throckmorton, 98 U.S. at 65-68 (1878).

In *Marshall v. Holmes*, 141 U.S. 589 (1891) relying on *Barrow v. Hunton*, 99 U.S. 80 (1878) extended *Throckmorton*.

> While, as a general rule, a defense cannot be set up in equity which has been fully and fairly tried at law, and although, in view of the large powers now exercised by courts of law over their judgments, a court of the United States, sitting in equity, will not assume to control such judgments for the purpose simply of giving a new trial, it is the settled doctrine that "any fact which clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself in a court of law, or of which he might have availed himself at law, but was prevented by fraud or accident, unmixed with any fault or negligence in himself or his agents, will justify an application to a court of chancery." The leading case upon this subject is *Barrow v. Hunton*, 99 U.S. 83-85 (1878).

141 U.S. at 596-98.

While the precise contours of fraud upon the court claim is somewhat unformulated, it has been stated that it is most "typically confined to the most egregious cases, such as bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the court's integrity and ability to function impartially is directly impinged." *Great Coastal Express Company v. International Brotherhood*, 675 F.2d 1349, 1355-56 (4th Cir. 1982); *Bizzell v. Hemingway*, 548 F.2d 505, 508 (4th Cir. 1977). It is apparent under *United States v. Throckmorton*, and *Marshall v. Holmes*, that a common law bill in equity lies under *Barrow v. Hunton* in federal court to enjoin the operation of a void judgment. All the elements essential to a bill are present in this case:

> (1) judgment which ought not, in equity and good conscience, be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; (5) the absence of any adequate remedy at law.

As early as Magna Carta, procedural norms were regarded as a valuable means of protecting the rights of litigants. In America, with the object of preventing an arbitrary government, procedural safeguards were guaranteed to all persons by the inclusion of "due process" clauses in the various federal and state constitutions. Few principles of law, applicable as

well to the administrative process, are as fundamental or well established as "a party is not to suffer . . . without an opportunity of being heard." *Painter v. Liverpool Oil Gas Light Co.*, 11 Eng. Rep. 478, 484, 3 Adm. & Eccl. 433, 448-49 (K.B. 1836). *Caritativo v. California*, 357 U.S. 549, 558 (1958) (Frankfurter, J., dissenting); *Gorman v. University of Rhode Island*, 837 F.2d 7, 12 (1st Cir. 1988).

2. The *"Rooker-Feldman"* Exception Doctrine to Subject Matter Jurisdiction Does Not Apply to a Common Law Bill in Equity Seeking to Void a Judgment under *Barrow v. Hunton.*

The *"Rooker-Feldman"* doctrine is derived from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476-77 (1983). The *"Rooker-Feldman"* doctrine stands for the rather unremarkable proposition that the lower federal courts lack jurisdiction to engage in appellate review of state court determinations, such power residing exclusively in this Court under 28 U.S.C. § 1257.

In *Rooker v. Fidelity Trust Company*, 263 U.S. 413, 416 (1923) the Court held that the federal district court had no subject matter jurisdiction to entertain what was essentially an appeal seeking to review the substantive merits of a final state court judgment. The Court noted that the common law bill was merely an attempt to collaterally attack the

judgment for alleged errors of law committed in the state court. *Rooker* simply provides that where a final state court judgment has been rendered, after due hearing, by a state trial court, with jurisdiction of the subject matter and parties, and fairly presented to the highest state court in which a decision could be obtained, then only the resort for correction of errors involving federal questions is by certiorari to the United States Supreme Court under 28 U.S.C. § 1257.

In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983) the Court unremarkably held, citing *Rooker* by a simple string cite, that the United States district courts are without original jurisdiction to review final determinations of the District of Columbia Court of Appeals in judicial proceedings. Review of such determinations can be obtained only in this Court. See 28 U.S.C. § 1257. See also, *Atlantic Coast Line R. Co. v. Locomotive Engineers*, 398 U.S. 281, 296 (1970); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415, 416 (1923).

In *Catz v. Chalker*, 142 F.3d 279 (6th Cir. 1998) the court held that "*Rooker-Feldman*" did not apply to a separate, independent and original action in the nature of a bill in equity available as a remedy under the common law of the rendering state of Arizona law asserting constitutional claims arising directly under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, invoking 28 U.S.C. § 1331 (federal question jurisdiction). Id. at 293-95. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136,

1140-41 (9th Cir. 2004) (same). As a jurisdictional doctrine, "*Rooker-Feldman*" precludes the lower federal courts from "second-guessing the merits" of a state court judgment. *Zimmer v. Moccio v. New York State Office of Court Administration*, 95 F.3d 195 (2d Cir. 1996) (*Rooker-Feldman* inapplicable where federal plaintiff denied full and fair opportunity to assert federal issue.); *Bell Atlantic of Md., Inc. v. MCI Worldcom, Inc.*, 240 F.3d 279, 308 (4th Cir. 2001). Thus, if the Petitioners' due process/fraud collateral attack of the Ohio foreclosure decree may be brought in the courts of the rendering state as an original equitable independent proceeding, then the same claim if filed in federal court under federal question or diversity jurisdiction is an original action under Article III of the United States Constitution. "*Rooker-Feldman*" is simply not implicated. See, *Leonard v. Suthard*, 927 F.2d 168, 170 (4th Cir. 1991); *Instruction Systems v. Computer Curriculum Corp.*, 35 F.3d 813, 821 (3d Cir. 1994); *United States v. Shepherd*, 23 F.3d 923, 924-25 (5th Cir. 1994); *United States ex rel. Robinson Rancheria Citizens Council v. Borneo*, 971 F.2d 244, 250-57 (9th Cir. 1992); *Lowman v. Falsett*, 335 F.2d 632, 639-40 (5th Cir. 1964).

When claims raised in federal court are "inextricably intertwined" with a state court judgment, the district court is being called upon to sit in an appellate capacity to review judicial legal error and second guess the merits of the state court decision. *Worldwide Church of God v. McNair*, 805 F.2d 888, 892-93 (9th Cir. 1986) (*Rooker-Feldman* only applies if

district court required to review findings of fact and conclusions of law); *Robinson v. Ariyoshi*, 753 F.2d 1468, 1472 (9th Cir. 1985), vacated on other grounds, 477 U.S. 902 (1986) ("inextricably intertwined" defined as actual consideration of and a decision on the issues presented); *Noland v. Noland*, 111 F.2d 392 (9th Cir. 1940) (*Rooker* no bar where no "realistic opportunity" to raise federal ground in state court); *Lynk v. LaPorte*, 789 F.2d 554, 564-65 (7th Cir. 1986) (*Rooker-Feldman* no bar where party not allowed to present federal claim in state court proceeding).

In *McKay v. Pfeil*, 827 F.2d 540 (9th Cir. 1987) the court noted that under *Barrow v. Hunton,* 99 U.S. 80-83 (1878) an original bill in equity to set aside a decree for fraud in the manner obtained constitutes an original and independent proceeding which is cognizable in federal court: Thus, "*Rooker-Feldman*" simply reconfirms that inferior federal courts established by Congress under Article III § 2 of the Constitution may only hear original cases and controversies and may not act in the capacity of an appellate tribunal, even though the state court judgment rests on an erroneous resolution of federal questions. Jurisdiction to review will only lie by certiorari to the Supreme Court under 28 U.S.C. § 1257. *Marbury v. Madison*, 5 U.S. 137, 175 (1803) (essential element of appellate jurisdiction, is that it revises and corrects the proceedings in a cause already instituted, and does not create the cause); *Atlantic Coast Line R. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 296

(1970). This independent action does not seek review of "mere revision of errors" which is the core essence of the appellate function. To the contrary, it raises new and original claims "arising upon new facts." *McKay v. Pfeil*, 827 F.2d at 543.

Petitioners' "independent action does not seek review of a 'mere revision' of errors" – the core essence of the appellate function. To the contrary, it raises new and original claims "arising upon new facts," separate and distinct claims of extra-judicial conduct and extrinsic fraud that occurred off the record of the Cuyahoga County court of common pleas proceedings. *McKay v. Pfeil*, 827 F.2d at 543. This case clearly calls into question the constitutional validity of the Cuyahoga County court of common pleas foreclosure decree and nothing more. *Rooker-Feldman* does not bar a federal action when Petitioners lacked a full and fair opportunity to litigate the fraud claims in the state court before a fair and impartial tribunal. *Moccio v. New York State Office of Court Admin.*, 95 F.3d 195, 199, 202 (2d Cir. 1996). The *Rooker-Feldman* doctrine applies so long as the party had a reasonable opportunity to raise his federal claims in the state court proceedings. If the party had "no reasonable opportunity" to be heard, the federal courts consider that the federal claim was not inextricably intertwined with the state court's judgment. Id. Relying on *Moccio* and *Catz v. Chalker*, the Tenth Circuit most recently reversed the district court's jurisdictional dismissal based on "*Rooker-Feldman*" grounds as the plaintiff had no reasonable

opportunity to raise his federal claims in the state proceeding. *Johnson v. Rodriques*, 226 F.3d 1103, 1107-13 (10th Cir. 2000).

And in *Nesses v. Shepard*, 68 F.3d 1003 (7th Cir. 1995), Chief Judge Richard Posner observed that there are limitations on the scope of the "*Rooker-Feldman*" doctrine when a plaintiff alleges that state judicial process and procedures have been corrupted:

> Were [the plaintiff] merely claiming that the decision of the state court was incorrect, even that it denied him some constitutional right, the [*Rooker-Feldman*] doctrine would indeed bar his claim. But if he claims, as he does, that people involved in the decision violated some independent right of his, such as the right (if it is a right) to be judged by a tribunal that is uncontaminated by politics, then he can, without being blocked by the "*Rooker-Feldman*" doctrine, sue to vindicate that right and show as part of his claim for damages that the violation caused the decision to be adverse to him and thus did him harm. . . . Otherwise there would be no federal remedy for a violation of federal rights whenever the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment, as alleged in cases such as *Dennis v. Sparks*, 449 U.S. 24 (1980), and *Casa Marie, Inc. v. Superior Court*, 98 F.3d 252, 259 (1st Cir. 1993). This result would be inconsistent with cases in which, for example, police officers are sued under 42 U.S.C. § 1983 for having fabricated

> evidence that resulted in the plaintiff's being convicted in a state court.

Id. at 1005. (Emphasis added).

In *Fontana Empire v. City of Fontana*, 307 F.3d 987, 995-96 (9th Cir. 2002) the court relying on *Catz v. Chalker* opined:

> Therefore, we hold FEC's claims for relief are not barred by the *Rooker-Feldman* doctrine because a separate claim for relief is authorized by state law. See *Davis*, 70 F.3d at 376; *Gauthier*, 831 F.2d at 561; Cal. Civ. Proc. Code § 701.680 (2002) ("If the sale is set aside, the judgment of the judgment creditor is revived."). FEC also argues that the *Rooker-Feldman* doctrine is inapplicable because its suit is an action separable from and collateral to the merits of the state court judgment: the doctrine does not bar their claims because they are not seeking to challenge the foreclosure decree against the property but, rather, merely challenging the notice to participate in the foreclosure sale. See *Pennzoil*, 481 U.S. at 21 (Brennan, J., concurring); *Kiowa Indian Tribe v. Hoover*, 150 F.3d 1163, 1170 (10th Cir. 1998) ("On its facts, Pennzoil demonstrates that asking a federal court to enjoin post-judgment collection procedures that allegedly violate a party's federal rights is distinguishable from asking a federal court to review the merits of the underlying judgment."); *Catz v. Chalker*, 142 F.3d 279, 294 (6th Cir. 1998).

In *Rooker v. Fidelity Trust*, decided in 1923, the plaintiffs in federal court had lost a case in state court. The legal wrong alleged by the federal plaintiffs was that the state court had made errors in deciding their federal constitutional claims, rather than that the defendants had acted illegally. The federal plaintiffs brought a bill in equity seeking to have the state court judgment declared null and void because of the constitutional errors that the state court had allegedly made. In *Rooker* the Court noted that it affirmatively appeared from the allegations in the bill that the state court had jurisdiction over the subject matter and the parties in the case, and that its judgment was therefore not void. Because the judgment was not void, the state court's alleged constitutional errors could be corrected only "in an appropriate and timely appellate proceeding." *Rooker*, 263 U.S. at 415. To reverse or modify the judgment of the state court because of such errors "would be an exercise of appellate jurisdiction" possessed only by the Supreme Court. Id. at 416. Since the jurisdiction of the district court is "strictly original," the Supreme Court affirmed the district court's jurisdictional dismissal of the bill with respect to those claims. Id. Reduced to its essence, *Rooker* held that when a losing plaintiff in state court brings a suit in federal district court asserting as legal wrongs the allegedly erroneous legal rulings of the state court and seeks to vacate or set aside the judgment of that court, the federal suit is a forbidden de facto appeal. Id. at 1155-56.

So understood, the operation and purpose of the "inextricably intertwined" test in *Feldman* is fairly clear. A federal district court dealing with a suit that is, in part, a forbidden de facto appeal from a judicial decision of a state court must refuse to hear the forbidden appeal. As part of that refusal, it must also refuse to decide any issue raised in the suit that is "inextricably intertwined" with an issue resolved by the state court in its judicial decision. A federal suit is not a forbidden de facto appeal because it is "inextricably intertwined" with something. Rather, it is simply a forbidden de facto appeal. Only when there is already a forbidden de facto appeal in federal court does the "inextricably intertwined" test come into play: Once a federal plaintiff seeks to bring a forbidden de facto appeal, as in *Feldman*, that federal plaintiff may not, as part of the suit in which the forbidden appeal is brought, seek to litigate an issue that is "inextricably intertwined" with the state court judicial decision from which the forbidden de facto appeal is brought. Id. at 1158. Accord, *Maldonado v. Harris*, 370 F.3d 945 (9th Cir. 2004).

More recently the Court decided two major *Rooker-Feldman* cases. *Exxon Mobil Corp v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005); *Lance v. Dennis*, 126 S. Ct. 1198 (2006). *Exxon* and *Lance* combined offer no new analysis to the "*Rooker-Feldman*" doctrine except to make clear that it is confined to very narrow and limited circumstances: where "1) the plaintiff lost in state court, 2) the alleged injuries caused by the state court judgment, 3) invited district

court review and rejection of that state court judgment where, 4) that state court judgment was rendered before the district court proceedings." *Exxon* at 284. The "*Rooker-Feldman*" doctrine does not apply to an action collaterally attacking a final state court judgment on grounds that it is void. As the present action did not ripen as a separate and independent claim until the Ohio court entered a foreclosure decree. It is clearly established law that a judgment is void if the court that rendered it either lacked subject matter jurisdiction, personal jurisdiction or acted in a manner inconsistent with due process of law. *Margoles v. Johns*, 660 F.2d 291, 295 (7th Cir. 1981).

The Fifth, Sixth, Seventh, Ninth and Tenths Circuits have all held that the *Rooker-Feldman* doctrine does not bar an original, separate independent action that could be brought as a remedy under the law of the rendering state and federal law in the nature of a common law bill in equity collaterally attacking a final state court judgment as void if the court that rendered it either lacked subject matter jurisdiction, personal jurisdiction or acted in a manner inconsistent with due process. *Lewis v. East Feliciana Parish Board*, 820 F.2d 143, 146 (5th Cir. 1987); *Catz v. Chalker*, 142 F.3d 279, 294 (6th Cir. 1998); *Nesses v. Shepard*, 68 F.3d 1003, 1005 (7th Cir. 1995); *McKay v. Pfeil*, 827 F.2d 540, 543 (9th Cir. 1987); *Johnson v. Rodriques*, 226 F.3d 1103, 1107 10th Cir. 2004) (federal courts "may entertain a collateral attack on a state court judgment that is void whenever the Court that rendered it lacked

jurisdiction over the subject, the person or acted in a manner inconsistent with due process of law). Under *Griffith v. Bank of New York*, 147 F.2d 899, 901-03 (2d Cir. 1945) it is well settled that the federal courts may exercise equity powers available to set aside, deny enforcement or ignore a state court judgment obtained by extrinsic fraud and a bill of equity enjoins void judgment uncontaminated" by a "litany" of pervasive ex parte judicial cronyism, "home cooking," case assignment manipulation, falsehood to acquire standing to sue, fraud upon the rendering court and the like without being denied access to the federal courts under *Rooker-Feldman*.

In *In re Murchison*, 349 U.S. 133 (1955) the Court made clear:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. . . . Circumstances and relationships must be considered. This Court has said, however, that 'Every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear, and true between the State and the accused, denies the latter due process of law.' *Tumey v. Ohio*, 273 U.S. 510, 532. To perform its high function in the best way 'justice must satisfy the appearance of justice.' *Offut v. U.S.*, 348 U.S. 41.

Id. at 136.

In sum, any state court judgment collaterally attacked in federal court as void under where a party was denied a "full and fair opportunity" to assert claims and defenses violates due process and is not entitled to full faith and credit under the Federal Full Faith and Credit Act, 28 U.S.C. § 1738. And if the state court judgment is void then *Rooker-Feldman* cannot bar a collateral attack in federal court under *Rooker-Feldman*. *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 481-82 (1982) (court may not grant preclusive effect to constitutionally infirm state court judgment – federal courts not required to accord full faith and credit); *Marressee v. American Academy of Orthopedic Surgeons*, 470 U.S. 373, 380 (1985) (28 U.S.C. § 1738 requires United States courts to give same preclusive effect subject to due process); *Haring v. Prosise*, 462 U.S. 306, 311 (1983); *Migra v. Warren City Board of Education*, 465 U.S. 75, 83 n.5 (1985); *Allen v. McCurry*, 449 U.S. 90, 95 (1980) (same).

IX. CONCLUSION

This petition raises an important question of first impression since *D.C. Court of Appeals v. Feldman* was decided by the Court in 1983: Whether "*Rooker-Feldman*" abrogates the filing in federal court of a common law bill in equity under *Barrow v. Hunton*, seeking to void a state foreclosure decree when Petitioners did not ask the federal courts to review the merits of the foreclosure decree only those departures from established modes of procedure effecting the full

and fair opportunity to be heard under the Due Process Clause of the Fourteenth Amendment such as manipulation and re-assignment of elected partisan judges off the record, willfully evading the random re-assignment procedures established by the clerk of courts as well as for fraud upon the rendering Ohio court by Banks that did not even have standing to bring a foreclosure action as they possessed no cognizable legal or equitable interest in Petitioners' house or the mortgage instruments.

For the foregoing reasons the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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June 11, 2008

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-3561

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RICHARD F. DAVET; LYNN DAVET, Plaintiffs-Appellants, v. NATIONSBANC MORTGAGE CORPORATION, Defendant. BANK ONE, CLEVELAND, NA, nka JP Morgan Chase Bank, Defendant-Appellee.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

ORDER

(Filed Nov. 28, 2007)

Before: SILER, GIBBONS, and MCKEAGUE, Circuit Judges.

Richard F. Davet and Lynn Davet, husband and wife, residents of Ohio, appeal pro sea district court order dismissing their complaint for lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1). This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously

agrees that oral argument is not needed. Fed. R. App. P. 34(a).

The Davets filed this complaint against the defendant bank, which had foreclosed on their real property, asserting diversity jurisdiction. The Davets sought a declaration that the judgment of foreclosure was invalid, and monetary relief. Defendant moved to dismiss, arguing that the district court lacked jurisdiction under the *Rooker-Feldman* doctrine, or alternatively, that the complaint was barred by claim preclusion. The Davets filed a response. The district court dismissed the complaint for lack of jurisdiction and did not reach the claim preclusion argument. The Davets reassert their claims on appeal.

The underlying foreclosure proceeding was initiated in state court in 1996. The Davets main argument is that a partial judgment was entered by an administrative judge in 1999, due to the unavailability of the judge originally assigned to the case, and that this action was in violation of state court procedures. The Davets appealed that partial judgment, but the appeal was dismissed by the state appellate court because there was no final appealable order. In 2005, a final judgment of foreclosure was entered, and their later appeals were dismissed. The Davets argued in their complaint that, because the partial judgment in 1999 was signed by a judge other than the one originally assigned to their case, and they could not immediately appeal that action, the judgment of foreclosure should be declared void by the district court.

We review the dismissal of a complaint for lack of subject matter jurisdiction de novo. *Nihiser v. Ohio EPA*, 269 F.3d 626, 627 (6th Cir. 2001). De novo review in this case indicates that the dismissal of the complaint must be affirmed for the reason stated by the district court. Federal district courts lack jurisdiction over complaints by unsuccessful litigants from state court seeking review of thestate court judgment which they allege has wronged them. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). The Davets argue that a state court rulingmay be declared void by a federal district court, citing *Twin City Fire Ins. Co. v. Adkins*, 400 F.3d 293, 297 (6th Cir. 2005). That case, however, does not apply here, because it was brought by a non-party to the case being challenged and thus fit within an established exception to the *Rooker/Feldman* doctrine.

Because the Davets present no argument on appeal which demonstrates that the district court erred in finding that it lacked jurisdiction over this complaint, the order of dismissal is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT

/s/ [Illegible]
Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Richard F. Davet, et al.,	) **CASE NO.**
Plaintiffs,	) **1:06 CV 1875**
vs.	) **JUDGE PATRICIA A. GAUGHAN**
Bank One Cleveland, N.A.,	)
Defendant.	) **Memorandum of Opinion and Order**

INTRODUCTION

This matter is before the Court upon the Motion of Defendant JP Morgan Chase Bank, N.A. to Dismiss Pursuant to Fed.R.Civ.P. 12(b). This case arises out of a foreclosure order issued in state court. For the reasons that follow, the motion is GRANTED.

FACTS

Plaintiffs, Richard and Lynn Davet, filed this lawsuit against defendant, Bank One, Cleveland, alleging that a foreclosure decree issued in favor of defendant in a state court proceeding is unenforceable. According to the amended complaint, the presiding judge improperly transferred the case to a second judge. The second judge granted a motion for summary judgment against plaintiff. Plaintiff alleges that pursuant to state court local rules, the transfer was not proper.

Plaintiffs filed numerous appeals of various decisions made in the state trial court. It appears that all of the appeals were dismissed. Plaintiffs also appealed some of the dismissals to the Ohio Supreme Court, which declined to hear the appeals. Thereafter, on August 7, 2006, the foreclosure decree was executed and plaintiffs' property was sold. Subsequently, plaintiff filed this lawsuit asserting two claims for relief. Count one is a claim for declaratory relief. Count two seeks compensatory damages. Both counts are premised on the allegation that the foreclosure decree is void as a result of the improper transfer.

Defendant moves to dismiss the lawsuit on the grounds that this Court lacks jurisdiction over this matter. According to defendant, the *Rooker-Feldman* and *res judicata* doctrines bar plaintiffs' claims in this case. Plaintiffs oppose the motion.

ANALYSIS

Defendant argues that this Court lacks jurisdiction over this matter because appeals from final state court judgments lie only with the Supreme Court. According to plaintiffs, there is no final state court judgment and, therefore, jurisdiction is proper in this forum.

Upon review, the Court finds that it lacks jurisdiction over this matter. In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), the plaintiffs filed a lawsuit in federal district court arguing that an adverse state

court judgment was "null and void." The Court held that 28 U.S.C. § 1257 vests the Supreme Court with exclusive jurisdiction over state court appeals. Because district courts are courts of original, as opposed to appellate jurisdiction, the district court lacked subject matter jurisdiction over the case. Sixty years later, the Supreme Court decided *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983). In *Feldman,* the Court in essence held that bar applicants could not appeal a decision from the District of Columbia Court of Appeals rejecting their bar applications. The holdings in these two cases are now commonly known as the *Rooker-Feldman* doctrine.

Recently, the Supreme Court has criticized district courts for expanding the *Rooker-Feldman* doctrine. For example, in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 544 U.S. 280 (2005) the Court reiterated that the doctrine is confined to "cases brought by state court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.* at 284. Thus, in *Exxon Mobil,* the Court held that the *Rooker-Feldman* doctrine does not preclude a district court from exercising subject matter jurisdiction over a case even though a parallel state court case is proceeding. Because the complainant is not a "state-court loser," the doctrine does not apply. *See also, Lance v. Dennis,* 546 U.S. 459 (reiterating that *Rooker-Feldman* doctrine is to be narrowly construed).

In this case, the holding in *Rooker* is directly applicable. The state court issued a decree in foreclosure on July 13, 2005, at which point the case had been pending for ten years. Plaintiffs filed a notice of appeal, which the court of appeals dismissed. Thereafter, the Ohio Supreme Court declined to exercise jurisdiction over the matter. Plaintiffs now come before this Court, claiming that the state court judgement is null and void. This is precisely the situation presented in *Rooker*. Plaintiffs, who lost in state court, filed this action after the judgment became final.[1] In this case, plaintiffs are claiming that the state trial court erred by failing to follow local rules regarding the assignment of judges. This argument attacks the validity of the state court judgment.[2] Federal district court review of state court decisions, however, is precluded by *Rooker*. Rather, the United States Supreme Court is vested with exclusive federal jurisdiction over state court appeals. Accordingly, this court lacks jurisdiction over this matter.

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[1] Plaintiffs argue that there are issues left for the state court of appeals to decide. This Court disagrees. There is no indication that any appeal is currently pending. Regardless, it appears that plaintiff's appeal of the foreclosure decree was dismissed. Even if the appeal was dismissed in error, this Court does not have appellate jurisdiction over the matter.

[2] Plaintiffs argue that federal district court review is available because the trial court lacked jurisdiction because of the improper transfer. The Court rejects this argument. The issue of whether the transfer was proper does not alter the fact that the tribunal had jurisdiction over the matter.

Having concluded that the Court lacks jurisdiction, the Court need not address whether the doctrine of *res judicata* bars assertion of plaintiffs' claims.

CONCLUSION

For the foregoing reasons, the Motion of Defendant JP Morgan Chase Bank, N.A. to Dismiss Pursuant to Fed.R.Civ.P. 12(b) is GRANTED.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. CAUGHAN
United States District Judge

Dated: 4/2/07

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-3561

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RICHARD F. DAVET; LYNN DAVET, Plaintiffs-Appellants, v. NATIONSBANC MORTGAGE CORPORATION, Defendant. and BANK ONE, CLEVELAND, NA, nka JP Morgan Chase Bank, Defendant-Appellee.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

ORDER

(Filed Jan. 16, 2008)

Before: SILER, GIBBONS, and MCKEAGUE, Circuit Judges.

Richard F. Davet and Lynn Davet, Ohio residents, have filed a motion for reconsideration of this court's order of November 28, 2007, affirming the district court's order dismissing their complaint for lack of jurisdiction.

Upon consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The motion for reconsideration is accordingly denied.

ENTERED BY ORDER
OF THE COURT

/s/ [Illegible]
Clerk

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISON

RICHARD F. DAVET, 24800 COMMUNITY DRIVE BEACHWOOD, OH 44122, AND LYNN DAVET 24800 COMMUNTIY DRIVE BEACHWOOD, OH 44122, Plaintiffs, vs. BANK ONE CLEVELAND, NA. Nka JP MORGAN CHASE BANK 270 PARK AVE. NEW YORK, NY 10017-2070, Defendant	Case No.: 1:06 CV 1875 JUDGE GAUGHAN **AMENDED** **VERIFIED** **COMPLAINT** **(Declaratory Judgment)**

Plaintiffs, Richard and Lynn Davet, for their Amended Verified Complaint against defendant Bank One Cleveland, NA, nka JP Morgan Chase Bank state:

1. Plaintiffs, Richard and Lynn Davet are married and at all material times herein have resided in their home at 24800 Community Drive, Beachwood, OH.

2. Defendant is Bank One Cleveland, NA nka JP Morgan Chase Bank is a foreign bank

with its headquarters and principle place of business in New York, New York.

3. This Court has jurisdiction over this matter under 28 USC § 1332 because there is diversity between the parties and the amount in controversy exceeds $ 75,000 exclusive of costs and interest.

4. Venue is proper because the real estate at issue is located in Beachwood, Ohio and the action arose in whole or in part in northeast Ohio.

FIRST CAUSE OF ACTION

(Declaratory Judgment)

5. In June 1978, Plaintiff Richard Davet executed a note and mortgage to Central National Bank of Cleveland for the purchase of Plaintiffs home at 24800 Community Drive, Beachwood, OH 44122. (See Exhibit "A" attached).

6. Society National Bank acquired the note and mortgage in 1988 through a series of mergers and acquisitions and then reassigned the note and mortgage to Federal National Mortgage Association (Fannie Mae) in August of 1988. (Exhibit "B" attached.)

7. On March 1, 1996, Nationsbanc Mortgage Corp. filed a foreclosure action against the Plaintiffs in the Cuyahoga County Court of Common Pleas (Case No 96-304224), assigned to Judge Kathleen Ann Sutula, wherein it

claimed to be the owner and holder of the note.

8. On March 14, 1996, subsequent to the filing of the filing of the foreclosure action, Society National Bank assigned the note and mortgage to Nationsbanc Mortgage Corp. (See Exhibit "C" attached). notwithstanding the fact that Society National Bank had assigned the note and mortgage earlier to Fannie Mae (See Paragraph 6). Nonetheless, Nationsbanc continued to claim that it was the owner and holder of the note and mortgage although Nationsbanc has assigned the note and mortgage to Fannie Mae in 1988 (see Exhibit "B" as referenced in # 6 of this document).

9. On May 15, 1996, defendant Bank One filed their Answer and Crossclaim stating that they entered into a Line of Credit Agreement with Plaintiffs Richard and Lynn Davet, with a stated balance of $163,366.13 with interest of 8.75% (variable) per annum from March 21, 1996. Defendant Bank One also stated that it was the holder of a Mortgage which was executed and delivered for the purpose of securing the indebtedness under the Line of Credit Agreement.

10. Three years after the filing of the foreclosure action, for reasons unknown to the Plaintiffs, Nationsbanc Mortgage Corp. prevailed upon Fannie Mae to reassign the mortgage and note to it on March 18, 1999 (See Exhibit "D" attached).

11. On July 6, 1999 Bank One filed, among other things, MOTION FOR LEAVE TO FILE AMENDED CROSS-CLAIM FOR FORECLOSURE & AMENDED ANSWER & CROSS-CLAIM OF DEFT. BANK ONE which was granted by Judge Kathleen Sutula.

12. Thereafter, on September 10, 1999, defendant filed a MOTION FOR SUMMARY JUDGMENT in the court of Judge Kathleen Sutula.

13. Subsequent thereto Judge Sutula improperly assigned and transferred the foreclosure action to Judge Richard McMonagle without the knowledge or notice to the Plaintiffs.

14. On September 24, 1999 Judge Richard McMonagle granted defendant Bank One's MOTION FOR SUMMARY JUDGMENT and thereby granted the latter a decree in foreclosure. (See Exhibit "A" of PLAINTIFF RICHARD DAVET'S MOTION TO AMEND COMPLAINT).

15. The foreclosure case judgment entry by Judge Richard McMonagle in favor of said defendant Bank One is a nullity because Judge Sutula did not properly and validly assign the case to Judge Richard McMonagle.

16. Plaintiff had no knowledge that Judge Sutula had assigned and transferred the foreclosure action to Judge Richard McMonagle. Subsequently, Plaintiffs objected to (See Exhibit "E" attached) and appealed the Summary Judgment Foreclosure Decree rendered

by Judge McMonagle in favor of Bank One to the Cuyahoga County Court of Appeals. The Appellate Court dismissed the appeal for the lack of a final order and sent the case back to Judge McMonagle to remedy the matter. Judge McMonagle failed to do so. As a result the foreclosure issue was not resolved and remains unresolved judicially due to the inaction of the Trial Judge (see Exhibit "F" Opinion of Appellate Judge Corrigan). Therefore, Judge McMonagle was without jurisdiction to act in the case and his ruling is a total nullity[1].

17. Thereafter the Decree of Foreclosure (See Exhibit "B", PLAINTIFF RICHARD DAVET'S MOTION TO AMEND COMPLAINT) was pursued by Bank One and eventually led to the sale of the Plaintiff's property on August 7, 2006. The purchaser of the property at the Sheriff's Sale was Homesales, Inc., a wholly owned entity of Bank One Cleveland, NA, nka JP Morgan Chase Bank.

SECOND CAUSE OF ACTION

(Compensatory Damages)

18. Plaintiffs incorporate their prior allegations.

19. Plaintiffs have sustained compensatory damages in excess of $75,000 and punitive damages to be assessed by the jury.

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[1] See Berger v Berger, 3 Ohio App.3rd, 125

Wherefore, Plaintiffs demand judgment declaring the foreclosure decree issued to the defendant Bank One, nka JP Morgan Chase Bank in the foreclosure action to be null, void and of no legal effect and for an order prohibiting the defendant Bank One from taking any action to enforce, execute of otherwise collect upon the void judgment and award damages in excess of $75,000 together with costs and attorney fees. Plaintiffs request this Court to stay execution of the Writ of Possession of the real property, now scheduled for January 22, 2007, pending the determination of the instant action.

Respectfully Submitted,

/s/ Richard Davet
Richard Davet, Pro-se
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Cleveland, OH 44110
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JURY DEMAND

Plaintiffs demand a trial by jury.

/s/ Richard Davet
Richard Davet, Pro-se

COMPILATION OF ROOKER-FELDMAN DISMISSALS CHALLENGING STATE COURT FORECLOSURE JUDGMENTS

FIRST CIRCUIT CASES

D. New Hampshire

Vorisek v. Arkley, II, et al., 2006 U.S. Dist. LEXIS 75456 (D. N.H. 2006) (court refused to enjoin the sale of the Center Harbor property that the state courts authorized because such relief would necessarily require the court to void the contrary state court decisions dismissing Allan's quiet title action, affirming that judgment, and ordering a sale, or, determine that they were wrong, in contravention of the Rooker-Feldman doctrine)

D. Puerto Rico

Yeiser v. GMAC Mortgage, 381 F.Supp. 2d 1 (D. P.R. 2005) (holding that the right to rescind the mortgage under TILA was inextricably intertwined with the state court judgment in the foreclosure proceedings on the property and thus was barred under the Rooker-Feldman doctrine)

SECOND CIRCUIT CASES

D. Conn

Tucker v. Northeast Savings, 675 F.Supp. 763 (D. Conn. 1987) (federal district court lacked jurisdiction to review state court rulings upholding these procedures; (2) plantiff's attempts to recast the action as

one for violation of civil rights did not confer jurisdiction; and (3) even if court did have jurisdiction, principles of res judicata barred the claims)

E.D. N.Y.

Ashby v. Polinsky, 2007 WL 608268 (E.D.N.Y. 2007) (action due process challenge to foreclosure of real property is dismissed for lack of subject matter jurisdiction under Rooker-Feldman)

Conveal v. Consumer Home Mortgage, Inc., 2005 U.S. Dist. LEXIS 25346 (E.D. N.Y. 2005) (court lacked subject matter to litigate plaintiffs' claims in the amended complaint for conspiracy to commit fraud, willful fraudulent conduct, and aiding and abetting a "predatory loan" because the claims were dismissed with prejudice)

Dockery v. Cullen & Dykman, 90 F. Supp. 2d 233 (E.D. N.Y. 2000) (plaintiff was prohibited under the Rooker-Feldman doctrine from seeking to overturn the state court judgment of foreclosure)

Feinstein v. The Chase Manhattan Bank, San Diego, 2006 U.S. Dist. LEXIS 16507 (E.D. N.Y. 2006) (despite claims of wrongful and malicious fiduciary duty and criminal intent to defraud, court lacked subject matter jurisdiction under the R-F doctrine to consider plaintiff's purported appeal and request for preliminary injunction to stop a foreclosure sale ordered by the state court)

Garvin v. Bank of New York, 2005 U.S. Dist. LEXIS 44864 (E.D. N.Y. 2005) (plaintiff's challenge to the constitutionality of the state court foreclosure proceedings is barred by the Rooker-Feldman doctrine)

Mac Pherson v. State Street Bank and Trust Company, 452 F.Supp.2d 133 (E.D. N.Y. 2006) (under Rooker-Feldman, federal court lacked jurisdiction to adjudicate plaintiff's claim of unconstitutional service in the state court foreclosure action)

McKay v. Sacks, 2005 U.S. Dist. LEXIS 43347 (E.D. N.Y. 2005) (holding that to the extent plaintiff brought her federal court complaint as a means to challenge the state court judges' decisions in the foreclosure action, the court lacked jurisdiction to hear the action)

Mercado v. Playa Realty Corporation, 2005 U.S. Dist. LEXIS 14895 (E.D. N.Y. 2005) (under Exxon Mobil and Rooker-Feldman, plaintiff could not bring suit against the state court winner alleging that its predatory lending practices lead plaintiff to default on her loan)

Parra v. Greenpoint Mortgage Company, 2002 U.S. Dist. LEXIS 25281 (E.D. N.Y. 2002) (court refused to address plaintiff's direct attack on foreclosure action through claims that she never authorized the foreclosure and was not notified of the foreclosure proceeding and eventual sale of her home and her personal property)

Rene v. Citibank NA, 32 F.Supp.2d 539 (E.D.N.Y., 1999) (court lacked subject matter under Rooker-Feldman doctrine; and mortgage loan was valid, even though mortgagee issued check instead of giving mortgagors legal tender.)

Smith v. Wayne Weinberger, P.C., 994 F.Supp. 418 (E.D. N.Y. 1998) (holding that adjudicating Smith's conversion claims would "run afoul of the Rooker-Feldman doctrine" because plaintiff's complaint was an indirect challenge to the New York Supreme Court's default judgment of foreclosure).

Trakansook v. Astoria Federal Savings and Loan Association, 2007 U.S. Dist. LEXIS 28679 (E.D. N.Y.2007) (R-F doctrine precluded court from addressing plaintiff's claim that she was injured by defendant's motion for default in state court action, as opposed to the state court foreclosure judgment itself)

Wu v. Levine, 2005 U.S. Dist. LEXIS 21051 (E.D. N.Y. 2005) (court refused to hear plaintiff's claim that the foreclosure court ignored a bankruptcy discharge in ordering a property sale because this claim was inextricably intertwined with the state court judgment)

S.D. N.Y.

Jones v. Nat'l Commun. and Surveillance Networks, 409 F. Supp. 2d 456 (S.D.N.Y. 2006) (holding that federal district court lacked subject matter jurisdiction under Rooker-Feldman doctrine when "Plaintiff's

claims against Defendant Nations Banc arise out of a state court foreclosure proceeding, for which a final judgment was reached.")

Drew v. Chase Manhattan Bank, N.A., 1998 U.S. Dist. LEXIS 11616 (S.D. N.Y. 1998) (court was barred under the Rooker-Feldman doctrine from reviewing plaintiff's claims in her second foreclosure action that defendants miscalculated and misapplied her mortgage payments, notwithstanding plaintiff's reliance on 42 U.S.C. § 1983, the Constitution and claims of fraud)

Millman v. PNC Bank, 1998 U.S. Dist. LEXIS 14511 (S.D. N.Y. 1998) (barring under R-F three of plaintiff's claims that were "inextricably intertwined" with a property evaluation and deficiency judgment issued by the Court of Common Pleas)

Schuh v. Druckman & Sinel, L.L.P., 2008 U.S. Dist. LEXIS 15079 (S.D. N.Y. 2008) (court held that plaintiffs' RICO and common law fraud actions were derived in whole or part from any harm resulting from the state foreclosure judgment entered against them)

Simpson v. Putnam County National Bank of Carmel, 20 F.Supp.2d 630 (S.D. N.Y. 1998) (court declined to revisit plaintiff's claims of loss of real property, loss of his residence, loss of business relationships, esteem and respect, and damages to his creditworthiness and competitive abilities resulting from state court foreclosure judgment)

THIRD CIRCUIT CASES

Knapper v. Bankers Trust Co., 407 F.3d 573 (3d Cir. 2005) (*Rooker-Feldman* doctrine bars due process challenge to set aside state court foreclosure order)

E.D. Pa.

Andrew v. Ivanhoe Financial, Inc., 2007 U.S. Dist. LEXIS 73023 (E.D. Pa. 2007) (court lacked subject matter jurisdiction to adjudicate plaintiffs RESPA claims because the "crux" of plaintiff's complaint was the default judgment in the state foreclosure action)

Smith v. Litton Loan Servicing, 2005 U.S. Dist. LEXIS 1815 (E.D. Pa. 2005) (default judgment of foreclosure against the Smiths was a final determination by a state court that the Smiths could have appealed to the "appropriate Pennsylvania state court")

M.D. Pa.

Moncrief v. Chase Manhattan Mortgage Corporation Citibank NA, 2007 U.S. Dist. LEXIS 73090 (M.D. Pa. 2007) (federal court complaint barred because plaintiff could have raised her federal constitutional and mortgage fraud claims in the state foreclosure action)

Piotrowski, Jr. v. Federman and Phelan, LLP, 2005 U.S. Dist. LEXIS 31359 (M.D. Pa. 2005) (regardless of whether the defendants were mortgagors or debt collectors under 15 U.S.C. sec. 1692, plaintiffs' allegation that a mortgage assignment to one of

the defendants was improper would raise issues of standing that would improperly challenge the state court foreclosure judgment)

FOURTH CIRCUIT CASES

E.D. Va.

Carter v. Countrywide Home Loans, 2008 U.S. Dist. LEXIS 22825 (E.D. Va. 2008) (court rejects plaintiff's claim that the Rooker-Feldman doctrine is inapplicable if the parties to the federal action are different than those in the state foreclosure case)

FIFTH CIRCUIT CASES

United States v. Sheppard, 23 F.3d 923(5th Cir.1994) (Rooker-Feldman bars collateral attack of state court foreclosure order)

W.D. Texas

Tate v. Cedar Point Homeowners Association, Inc., 2007 U.S. Dist. LEXIS 35052 (W.D. Texas 2007) (federal court lacked jurisdiction to review plaintiff's allegation that the trial court denied him a jury trial because that claim was "inextricably intertwined" with the state judgment permitting defendant to foreclose on plaintiff's home)

S.D. Miss.

Grudzinskas v. Homeside Lending, Inc., 345 F.Supp.2d 633 (S.D. Miss. 2004) (rejecting plaintiff's "rambling complaint," court held that plaintiff's recourse regarding a state foreclosure sale was to submit the issue to the Missouri appellate courts, not federal court)

SIXTH CIRCUIT CASES

Givens v. Homecomings Financial, 2008 U.S. App. LEXIS 11003 (6th Cir. 2008) (plaintiff's request for an injunction to enjoin defendants from entering his property was an attempt to "obtain a federal reversal of state court decision" in violation of the R-F doctrine)

Denil v. State Bank of Kewaunee-Algoma, 1996 U.S. App. LEXIS 22647 (6th Cir. 1996) (holding that although plaintiffs' claim that a sheriff violated state law concerning writs of execution might not be barred under the Rooker-Feldman doctrine, it was a state cause of action, not a federal one, over which the court had no jurisdiction)

Kafele v. Lerner, Sampson & Rothfuss, L.P.A., 2005 U.S. App. LEXIS 28680 (6th Cir. 2005) (federal court could not grant relief on plaintiffs' vague claims for fraud and failure of consideration without disturbing the state court's judgments of foreclosure)

N.D. Ohio

Alex-Sauders v. Leake, 2006 U.S. Dist. LEXIS 24735 (N.D. Ohio 2006) (holding Rooker-Feldman doctrine applied to bar jurisdiction to review state court foreclosure judgment)

E.D. Mich.

Carrington v. Fannie Mae, 2005 U.S. Dist. LEXIS 31605 (E.D. Mich. 2005) ("As Plaintiff's complaint is nearly a perfect duplicate of his appeal filed in state court (from state court judgment of possession of foreclosed property) that was ultimately dismissed the *Rooker-Feldman* doctrine would make the federal court's consideration of his claim improper.").

Bell v. JP Morgan Chase Bank, 2006 U.S. Dist. LEXIS 94946 (E.D. Mich. 2006) (under R-F doctrine, plaintiff's demand for relief was "precisely the same as was sought in the state court actions")

Chase Manhattan Mortgage Corporation v. Blakely-El, 2007 U.S. Dist. LEXIS 25403 (E.D. Mich. 2007) (holding that plaintiff's status as a Sovereign American Moor did not vest the federal court with subject matter jurisdiction over plaintiff's foreclosure on her mortgage)

Thompkins-El v. Wells Fargo Bank Minnesota, 2006 U.S. Dist. LEXIS 59126 (E.D. Mich. 2006) (quoting *Exxon*, court lacked subject matter over plaintiffs' claims because plaintiffs were "state-court losers complaining of injuries caused by state-court judgments

. . . inviting district court review and rejection of those judgments.")

W.D. Mich.

Sinclair v. Bankers Trust Company of California, 2005 U.S. Dist. LEXIS 35590 (W.D. Mich. 2005) (holding that to grant plaintiff damages, the Court would need to act as an appellate court and conclude that the Michigan district court was wrong in upholding the foreclosure)

E.D. Ky.

Ward v. Appalachian Federal Credit Union, 2006 U.S. Dist. LEXIS 16963 (E.D. Ky. 2006) (court rejected plaintiffs' section 1983 claims, holding that "each of the myriad and vague claims set forth by the plaintiffs rests on the apparent premise that the probable entry of foreclosure in state court was invalid")

S.D. Ohio

Demmler v. Bank One NA, 2006 U.S. Dist. LEXIS 5193 (S.D. Ohio 2006) (court lacked jurisdiction to conduct appellate review of plaintiff's claims that the foreclosure judge erroneously allowed the defendant to foreclose in order to collect a debt and held that plaintiff had no right to a jury trial)

Frazier v. National City Bank, NA., 2005 U.S. Dist. LEXIS 24053 (S.D. Ohio 2005) (since plaintiff's claims challenged the validity of underlying promissory

notes and his opportunity to be heard, he was improperly attempting to attack the state court foreclosure judgment)

SEVENTH CIRCUIT CASES

Alexander v. Washington, 2006 U.S. App. LEXIS 6125 (7th Cir. 2006) (affirming, based on Rooker-Feldman doctrine, dismissal of a federal action challenging a state court eviction judgment because case "would not be in federal court but for the adverse state-court judgment," and because of the state court's "entry of and refusal to vacate" his order awarding possession)

Taylor v. Federal National Mortgage Association, 374 F.3d 529 (7th Cir. 2004) ((holding that "[t]he fact that Taylor is claiming compensatory damages in the amount of the value of her home (plus interest) demonstrates that her asserted injury is the loss of her home due to the foreclosure judgment, not an independent injury arising from acts of the Defendants")

Wright v. Tackett, 39 F.3d 155 (7th Cir. 1994) (no jurisdiction under Rooker-Feldman to intervene in the foreclosure actions)

N.D. Ill.

Barr v. Washington Mutual Bank, 2004 U.S. Dist. LEXIS 14909 (N.D. Ill. 2004) (since plaintiff's complaint did not ask the court to remedy an injury that was separate from the state court judgment, court

could not, under the Rooker-Feldman doctrine, act in an appellate capacity to reverse the state court judgment)

Boyd v. Law Title Ins. Co., 2006 U.S. Dist. LEXIS 2764 (N.D. Ill. 2006) ("Because the Rooker-Feldman doctrine applies, we have no jurisdiction to hear Boyd's claims [attacking the state-court foreclosure and confirmation of sale)

Spencer v. Mortgage Acceptance Corporation, 2006 U.S. Dist. LEXIS 31668 (N.D. Ill. 2006) (court declined to review state court judgment because each of plaintiff's federal claims was based on her state law claims related to "application for a mortgage, the conduct of the parties during the mortgage application process, her entry into a mortgage agreement, the subsequent repayment agreements, the mortgage foreclosure, and the judgment of foreclosure")

Thompson v. Ameriquest Mortgage Company, 2003 U.S. Dist. LEXIS 14700 (N.D. Ill. 2003) (court held that it would not review facts that existed when defendant filed its foreclosure action, but which plaintiff failed to raise either in the Circuit Court or on appeal)

Bryan v. Bellevue National Bank, 2004 U.S. Dist. LEXIS 11014 (N.D. Ill. 2004) (plaintiff's claims that the defendant violated the ECOA and FCRA were not independent of the Illinois' court's foreclosure judgment)

Byrd v. Homecomings Financial Network, 407 F. Supp. 2d 937 (N.D. Ill. 2005) (federal court did not posses jurisdiction to hear plaintiff's "collaterally attack" on a state foreclosure action and confirmation of sale with claims under FDCPA, RESPA, and TILA)

Davis v. JP Morgan Chase Bank, 2003 U.S. Dist. LEXIS 24880 (N.D. Ill. Mar. 10, 2003) (holding that "to the extent that their instant complaint seeks review of the judgment of foreclosure and sale and subsequent order of eviction, plaintiffs assert injury at the hands of the court and their claims are barred by Rooker-Feldman.)

S.D. Ill.

Deimund v. Homecoming Financial Network, 2006 U.S. Dist. LEXIS 29073 (S.D. Ill. 2006) (holding that although plaintiff raised some new federal claims, he should have raised them in state court, where the mortgage foreclosure became *res judicata*; "rescinding the sale would [also] be an extraordinary remedy in equity which is unjustified")

N.D. Ind.

Brooks v. Yorktown Funding, Inc., 2008 U.S. Dist. LEXIS 1766 (N.D. Ind. 2008) (plaintiffs' claim that they held a land patent which prevented defendant from foreclosing raised exactly the same issue that was already decided and appealed in the state court system)

E.D. Wis.

Amaya v. Milwaukee County, 2006 U.S. Dist. LEXIS 8752 (E.D. Wis. 2006) (because her injuries flowed from the state court judgment, court lacked jurisdiction under R-F doctrine to consider plaintiff's claims that the foreclosure and eviction violated her equal protection, due process, and other constitutional rights.)

W.D. Wis.

McMahon v. Washington State Bank, 2005 U.S. Dist. LEXIS 14395 (W.D. Wis. July 13, 2005) (although plaintiff's TILA claims for recision and cancellation of the mortgage lien were not raised or addressed in the state court proceeding, these claims were "inextricably intertwined" with the state case)

EIGHTH CIRCUIT CASES

Postma v. First Federal Savings and Loan Association of Sioux City, Iowa, 74 F.3d 160 (8th Cir. 1996) (collateral attack of state court foreclosure order outside the jurisdiction of the federal courts under Rooker-Feldman)

NINTH CIRCUIT CASES

S.D. Cal.

Cruz v. Citifinancial Mortgage Company, 2007 U.S. Dist. LEXIS 73179 (S.D. Cal. 2007) (federal court declined to "review the Vermont judges' and justices'

substantive legal rulings, the application of Vermont law, and the administration of the Vermont court action")

D. Hawaii

Marriot International, Inc. v. The Mitsui Trust & Banking Co., Ltd., 13 F. Supp. 2d 1059 (D. Hawaii 1998) (court refused to review denial of plaintiff's unsuccessful motion to intervene in a state foreclosure action)

D. Oregon

Reusser v. Wachovia Bank, NA,, 2006 U.S. Dist. LEXIS 55999 (D. Oregon 2006) (holding that plaintiffs' common law claims barred as all arose from the state court's prior foreclosure judgment)

TENTH CIRCUIT CASES

Crutchfield v. Countrywide Home Loans, 389 F.3d 1144 (10th Cir. 2004) (Rooker-Feldman barred plaintiff's federal court challenge to due process, lack of notice notice, service in the underlying foreclosure action)

DCR Fund I, LLC v. TS Family Limited Partner, 2008 U.S. App. LEXIS 1574 (10th Cir. 2008) (district court lacked jurisdiction over defendants' cross-claims for conspiracy, abuse of process, and conversion after a foreclosure sale)

ELEVENTH CIRCUIT CASES

Mickens v. Tenth Judicial Circuit, 2006 U.S. App. LEXIS125514 (11 Cir. 2006) (under the Rooker-Feldman plaintiff's federal claims were barred as claims "were attempting to reverse the state court's orders relating to ownership of the property in question.")

M.D. Fla.

Termarsch v. Argent Mortgage Company, LLC, 2008 U.S. Dist. LEXIS 31394 (M.D. Fla. 2008) (plaintiff was asking the federal court to render the state court's final judgment "null and void" by raising alleged due process and Banking Act violations)

Velardo v. Fermont Investment & Loan, 2008 U.S. Dist. LEXIS 28271 (M.D. Fla. 2008) (holding that "Plaintiffs' request for 'free and clear title to the property . . . makes it clear that they are, at least in part, asking this Court to overturn the foreclosure judgment, which this Court cannot do)